



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100; 165

[Docket No. USCG-2016-1022]

RIN 1625-AA08; AA00

Special Local Regulations and Safety Zones; Annually Recurring Events in Coast Guard

Southeastern New England Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending a special local regulation to change the method of providing notice to the public when enforcing the safety zone associated with the biennial Newport/Bermuda Race. The Coast Guard is also establishing permanent safety zones in Coast Guard Southeastern New England Captain of the Port (COTP) Zone for two recurring marine events. When the special local regulation or safety zones are activated and subject to enforcement, vessels and people will be restricted from portions of water areas that may pose a hazard to public safety. The revised special local regulation and safety zones will expedite public notification of the applicable marine events, and help protect the maritime public and event participants from hazards associated with these recurring marine events.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket,

go to <http://www.regulations.gov>, type USCG-2016-1022 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, contact Mr. Edward G. LeBlanc, Chief of the Waterways Management Division at Coast Guard Sector Southeastern New England, telephone 401-435-2351, e-mail Edward.G.LeBlanc@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Acronyms

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
LNTM	Local Notice To Mariners
NOE	Notice of Enforcement
NPRM	Notice of proposed rulemaking
§	Section
TFR	Temporary Final Rule
U.S.C.	United States Code

II. Background Information and Regulatory History

On March 9, 2017, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Special Local Regulations and Safety Zones; Annually Recurring Marine Events in Coast Guard Southeastern New England Captain of the Port Zone” (82 FR 13081). There we stated why we issued the NPRM, and invited comments on our regulatory action. During the comment period that ended on April 10, 2017, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231, 1233; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6 and 160.5; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define safety zones and special local regulations.

The Captain of the Port (COTP) Southeastern New England has determined that this rule will improve the method of providing notice to the public when enforcing the safety zone associated with the biennial Newport/Bermuda Race. The COTP Southeastern New England has also determined that establishing permanent safety zones for both the Fall River Grand Prix and the Cape Cod Bay Challenge will enhance the safety of vessels and the navigable waters in the safety zone during these scheduled events.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published on March 9, 2017. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM. This rule amends a special local regulation to change the method of providing notice to the public when enforcing the safety zone associated with the biennial Newport/Bermuda Race. This rule also establishes permanent safety zones in Coast Guard Southeastern New England Captain of the Port (COTP) Zone for two recurring marine events: (1) The Fall River Grand Prix, and (2) the Cape Cod Bay Challenge. The two events will be included in the Table at 33 CFR 165.173, which is a listing of recurring major marine events in the Coast Guard Southeastern New England COTP Zone. The TABLE provides the event name, type, and approximate safety zone dimensions as well as approximate dates, times, and locations of the events. The specific times, dates, regulated areas and enforcement period for each event will be provided through the Local Notice to Mariners.

When the special local regulation or safety zones are activated and subject to enforcement, vessels and people will be restricted from portions of water areas that may pose a hazard to public safety. The revised special local regulation and safety zones will expedite public notification of the applicable marine events, and help protect the maritime public and

event participants from hazards associated with these recurring marine events.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

With respect to the change in method of providing the NOE for the Newport/Bermuda Race, this rule utilizes an approach that the Coast Guard believes is more effective, less costly, and more flexible. By utilizing an LNTM to provide the NOE for the Newport/Bermuda race, the Coast Guard will be able to better inform waterway users in a timelier manner.

With respect to the safety zones for the recurring marine events, this regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessels will only be restricted from safety zones and special local regulation areas for a short duration of time; vessels may transit in all portions of the affected waterway except for those areas covered by the regulated areas, and vessels may enter or pass through the affected waterway with the permission of the COTP or the COTP’s representative. By including these two recurring marine events in the permanent regulation at 33 CFR 165.173, the Coast Guard is

eliminating the need to establish individual temporary rules for each separate event that occurs on an annual basis, thereby limiting the costs of repetitive rulemaking.

Notifications will be made to the local maritime community through the LNTM in advance of the events. The notifications will include the exact dates and times of enforcement, and no new or additional restrictions will be imposed on vessel traffic.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule does not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zones may be small entities, for the reasons stated in section IV above this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and

Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule does not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule does not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule makes an administrative change to the method of notification of one marine event, and involves the establishment of temporary safety zones in conjunction with two recurring marine events in Southeastern New England COTP Zone. These actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to

coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and record-keeping requirements, Waterways.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 100 and 165 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. In § 100.119, revise paragraph (c) to read as follows:

§ 100.119 Newport-Bermuda Regatta, Narragansett Bay, Newport, RI.

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(c) *Effective date.* This section is in effect biennially on a date and times published in the Local Notice to Mariners.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

3. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1; 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

4. In § 165.173, add sections 8.4 and 8.5 to the Table to read as follows:

§ 165.173 Safety Zones for annually recurring marine events held in Coast Guard

Southeastern New England Captain of the Port Zone.

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TABLE TO §165.173

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8.0 AUGUST

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8.4	Fall River Grand Prix	<ul style="list-style-type: none">• Event Type: Offshore powerboat race• Date: One weekend (Friday, Saturday, & Sunday) in August as announced in the Local Notice to Mariners.• Time: Approximately 8:00 a.m. to 5 p.m. daily• Location: Taunton River, Massachusetts, in the vicinity of Fall River and Somerset, MA.• Safety Zone Dimension: Mt Hope Bay and the Taunton River navigation channel from approximately Mt Hope Bay buoy R10 southwest of Brayton Point channel, and extending approximately two miles to the northeast up to and including Mt Hope Bay buoy C17 north of the Braga Bridge. The safety zone is encompassed by the following coordinates (NAD 83):<table><tr><th><u>Corner</u></th><th><u>Latitude</u></th><th><u>Longitude</u></th></tr><tr><td>SW.</td><td>41° 41.40'N.</td><td>71° 11.15'W.</td></tr><tr><td>NW.</td><td>41° 41.48'N.</td><td>71° 11.15'W.</td></tr><tr><td>SE.</td><td>41° 42.33'N.</td><td>71° 09.40'W.</td></tr><tr><td>NE.</td><td>41° 42.42'N.</td><td>71° 09.47'W.</td></tr></table>	<u>Corner</u>	<u>Latitude</u>	<u>Longitude</u>	SW.	41° 41.40'N.	71° 11.15'W.	NW.	41° 41.48'N.	71° 11.15'W.	SE.	41° 42.33'N.	71° 09.40'W.	NE.	41° 42.42'N.	71° 09.47'W.
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SE.	41° 42.33'N.	71° 09.40'W.															
NE.	41° 42.42'N.	71° 09.47'W.															
8.5	Cape Cod Bay Challenge	<ul style="list-style-type: none">• Event Type: Paddleboard excursion.• Date: One weekend day (Saturday or Sunday) in August.• Time: Approximately 4:30 a.m. to 4:30 p.m.• Location: Departing from Scusset Beach, Sandwich, MA, and transiting to Wellfleet Harbor,															

Wellfleet, MA.

- Position: A line drawn from Scusset Beach at approximate position 41° 47'N., 70° 30'W., to Wellfleet Harbor at approximate position 41° 53'N., 70° 02'W. (NAD 83).
 - Safety Zone Dimension: Approximately 500 yards extending in each direction from the line described above.
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Dated: May 10, 2017

RICHARD J. SCHULTZ,
Captain, U.S. Coast Guard,
Captain of the Port Southeastern New England.
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